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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 773

ANGEL PAIN VARGAS,
Petitioner,
v.
A. H. BULL STEAMSHIP CO.,
Respondent.

FELIPE ALMESTICA,
Petitioner,
v.
BALTIMORE INSULAR LINE, INC.,
Respondent.

JUAN ECHEVARRIA,
Petitioner,
v.
A. H. BULL STEAMSHIP CO.,
Respondent.

CONSOLIDATED PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

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The petitioners, Angel Pain Vargas, *et al.*, pray that a writ of certiorari issue to review the judgments of the Supreme Court of New Jersey entered in the above cases on November 12, 1957.

Opinions Below.

The opinion of the Superior Court of New Jersey is reported at 44 N. J. Super. 536, 121 A. 2d 139 (April 4,

1957). The opinion of the Supreme Court of New Jersey is reported at 135 A. 2d 857 (November 12, 1957).

Jurisdiction.

The judgment of the Supreme Court of New Jersey was made and entered on November 12, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3); Rule 19(1a) Supreme Court Rules.

Question Presented.

In suits under the Jones Act brought in the New Jersey Superior Court respondents moved to dismiss the complaints on the doctrine of *forum non conveniens* even though *in personam* jurisdiction was not available at the site of the injury, to wit, Puerto Rico, while available in New Jersey. The petitioners contended that the New Jersey Superior Court lacked jurisdiction to dismiss the complaints under the said doctrine on the grounds that, (1) jurisdiction under the Jones Act shall be where the defendant employer resides or where its principal office is located; (2) that the doctrine presupposes at least two forums in which the defendant is amenable to involuntary service of process, and (3) the doctrine of *forum non conveniens* being an equitable doctrine, the defendants came into the New Jersey Court with unclean hands by reason of the fact that it failed and refused to qualify as a foreign corporation in Puerto Rico, where it could be available for *in personam* service of process. The Superior Court dismissed the complaints with the proviso that the respondents accept service of complaints and appear in the courts of Puerto Rico. The Supreme Court of New Jersey affirmed. The question presented is:

1. Has a State Court the power to dismiss under the *forum non conveniens* doctrine a suit arising under the Jones Act when the suit is brought in the only jurisdiction where *in personam* service of process can be obtained?

Statute Involved.

46 U. S. C. 688, otherwise known as the Jones Act, provides as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

Statement.

The three cases, consolidated for argument below, present identical issues. All three plaintiffs are residents of Puerto Rico, and the two defendants are corporations of New Jersey having their principal office in New Jersey. *In personam* jurisdiction was available in New Jersey, but Puerto Rico offered no such haven and consequently plain-

tiffs were faced with the necessity of invoking the aid of the New Jersey Courts for the prosecution of their causes of action.

Accordingly, three suits were brought in the Superior Court of New Jersey under the Jones Act, 46 U. S. C. 688, for injuries sustained by the plaintiffs while loading ships owned by the defendants in the navigable waters off Puerto Rico. After service of the complaints and before the filing of an answer, the defendants moved to dismiss the respective causes of action, alleging that the suits are those in which the Court should apply the doctrine of *forum non conveniens*. The defendants pledged themselves to voluntarily appear in any action which may be brought against them in Puerto Rico. In opposition to the motion to dismiss, the plaintiffs contended that the State Court lacked jurisdiction to dismiss the complaints under the doctrine of *forum non conveniens* on the grounds that, (1) jurisdiction under the Jones Act shall be where the defendant employer resides or where its principal office is located, and (2) that the doctrine presupposes at least two forums in which the defendant is amenable to involuntary service of process, and (3) the doctrine of *forum non conveniens* being an equitable doctrine, the defendants came into the New Jersey Court with unclean hands by reason of the fact that it failed and refused to qualify as a foreign corporation in Puerto Rico, where it could be available for *in personam* service of process. The motions to dismiss were granted upon certain terms, including the acceptance of service of complaint and the payment to counsel of his disbursements and a counsel fee (R. 42a). The opinion of the New Jersey Superior Court is reported at 44 N. J. Super. 536, 131 A. 2d 139 (April 4, 1957).

On appeal the three suits were consolidated and the Supreme Court of New Jersey sustained the dismissals and

also affirmed the award of litigation expenses, including counsel fees, holding that the dismissal of the causes of action was conditioned upon the payment of counsel fees because the plaintiffs were forced to incur litigation expenses in New Jersey and that *in personam* jurisdiction while available in New Jersey was unavailable in Puerto Rico. The opinion of the New Jersey Supreme Court is reported in 135 Atl. 2d 857 (11/12/57).

The dismissal of the three complaints is a final judgment and denies access to the New Jersey Courts to three plaintiffs who sue under the Jones Act for injuries sustained by each of them in the navigable waters off Puerto Rico even though Puerto Rico offers no haven for *in personam* jurisdiction whereas *in personam* jurisdiction is available in the courts of New Jersey.

Reasons For Granting The Writ.

The decisions below should be reviewed because they interpret the jurisdictional requirements of the Jones Act in a way not in accord with applicable decisions of this court. Either the decisions below are in conflict with the decisions of this Court in *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698 (1942); *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44 (1941); *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947); *Ex Parte Collett*, 337 U. S. 55 (1949); *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379 (1953), or, if they are not so in conflict, are they in accord with *State ex rel. Southern R. Co.* v. *Mayfield*, 340 U. S. 1 (1950), even though in Mayfield, the plaintiff had the choice of jurisdictions while in the present petition, the petitioners had no choice but to institute suit where the principal office of the respondents was located. In either event, this court should grant review.

1. In Mayfield, this Court held that according to its own notions of procedural policy, a State may reject, as it may accept, the doctrine of *forum non conveniens* for all causes of actions begun in its courts. However, in that case the carrier was a foreign corporation and there seems to be no doubt that the injured had a choice of forums. In the present cases, the only forum provided the plaintiffs for *in personam* jurisdiction was New Jersey.

2. In Pope, Section 6 of the F. E. L. A. established the right of the petitioner to sue in Alabama. The injury to the petitioner and his residence was in Georgia. His employer instituted an equity suit in Georgia to restrain petitioner from prosecuting his action in Alabama. Georgia granted the injunction and this Court granted certiorari. This Court held that Section 1404(a) only applies to federal courts and not to state courts. It held that Section 1404(a) did not disturb the rulings of this Court in Kepner and Miles to the effect that a State Court cannot restrain a resident from prosecuting his claim in a Federal or State Court of another jurisdiction where the suit had been brought.

3. These cases are readily distinguishable from the cases aforementioned and that of *Gore* v. *United States Corp.*, 102 Atl. 2d 670, 15 N. J. 301; cert. denied 348 U. S. 861 (1954), relied on by the New Jersey Superior and Supreme Courts. The defendants are New Jersey corporations having principal offices in New Jersey and agents upon whom process may be served are located there. The petitioners are residents of Puerto Rico who were injured while working in the navigable waters off Puerto Rico. *In personam* jurisdiction was available in New Jersey; Puerto Rico offered no such haven. The respondents had no agent in Puerto Rico upon whom process could have been

served and the petitioners were faced with the necessity of invoking the aid of the New Jersey Court for the prosecution of their causes of action. The petitioners sought the only forum which had *in personam* jurisdiction over the respondents.

4. The State Court conditioned its dismissal of the causes of action upon the defendants accepting service of summons and complaint in a court of Puerto Rico having jurisdiction of the subject matter set forth in the complaints. The Insular Court of Puerto Rico cannot be considered State courts because Puerto Rico is not a State and 45 U. S. C. 56, made applicable to Jones Act cases provided as follows:

> ". . . The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states."

In essence, therefore, the State Court is remanding these cases to the United States District Court and it has not the power so to do.

5. The State Court directed the defendants to appear in Puerto Rico. Could not this be considered an attempt on the part of the State Court to compel the defendants to perform an *ultra vires* act, because the defendants have failed and have apparently refused to qualify in Puerto Rico, even though the defendants have been and will, in the future, continue to do business in Puerto Rico? Does the act of the defendants incorporating in the State of New Jersey and their failure to qualify in the jurisdiction of Puerto Rico, give to New Jersey the sole and exclusive right of obtaining *in personam* jurisdiction over transitory actions? While the defendants are accepting all of the benefits of doing business in Puerto Rico, by their refusal

to qualify there, they are intentionally avoiding *in personam* service of process there and compelling plaintiffs to first institute litigation at their corporate homes, 1800 miles away from the home of the plaintiffs, and then, if they so desire, dismissing the actions on the theory that the forum selected by plaintiffs was not a convenient one in which to air the litigation.

6. The questions presented in these consolidated cases are of great and recurring significance in the administration of the Jones Act. The petitioners have asserted their venue rights under the Jones Act and these rights should not be impaired by the application of state *forum non conveniens* law, as the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. *Arnold* v. *Panhandle and Sante Fe R. Co.*, 353 U. S. 360 (1957).

Conclusion.

For the reasons set forth above, it is respectfully submitted that the consolidated petition for a writ of certiorari should be granted.

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